

Backlog in EB-5 Immigration Program Creates Cash Hoard for Property Developers

In China, program is so popular that applicants can face delays of more than 10 years from the time they make their investment



A rendering of Blumenfeld Development Group's EB-5 visa project on 158 E. 126th St. in the Harlem neighborhood of Manhattan.
PHOTO: BIG

A backlog in the controversial EB-5 immigration program, which enables foreigners who invest in the U.S. to get green cards, is making billions of dollars of new money available for investments in real estate and other businesses.

The backlog is primarily in China, where the EB-5 program has become so popular that applicants can face delays of more than 10 years from the time they make their investment of at least \$500,000 to the time they get their visa.

The U.S. government limits the number of EB-5 visas to 10,000 a year, and per-country cutoffs can get imposed on countries like China where the application rate is high.

This had created a problem for applicants: 10 years is such a long time that some U.S. developers want to repay the investors' money before visas are issued. But doing so would disqualify the EB-5 application.

The solution—which was spelled out by the U.S. Citizenship and Immigration Services in a June policy memo—is a process known as redeployment. Essentially, the government said, EB-5 applications remain in good standing if the repaid money is reinvested in an active business and remains “at-risk.”

More than \$16.6 billion is expected to become available for redeployment between now and 2020, according to NES Financial, of San Jose, Calif., one of the leading providers of EB-5 servicing and administration.

Investment companies have begun to position themselves

to take advantage of billions of dollars now available for reinvestment. For example, in July, a venture of Greystone & Co., NES and Capital United LLC created a way for EB-5 money to be redeployed into a fund of real-estate bridge loans originated by Greystone. The fund hopes to have raised \$100 million by the end of next year, according to Allison Berman, the head of Greystone's EB-5 business.

Other U.S. investment companies are expected to follow Greystone's lead and try to tap into the redeploying funds. “People can find uses for billions of dollars,” said H. Ronald Klasko, an immigration lawyer based in Philadelphia.

The EB-5 program was created in 1990 and has been popular among U.S. real-estate developers, who have flocked to it as a source of low-cost financing. The program requires investments of at least \$500,000 to create at least 10 jobs, making it appealing to city and state economic development agencies as well.

But EB-5 also has been criticized for favoring wealthy immigrants and for channeling most of the funds to upscale neighborhoods rather than the economically disadvantaged and rural areas for which the program was intended. Some developers and middlemen who have raised money through the program also have been alleged to be involved in fraudulent schemes aimed at taking advantage of applicants.

Now the redeployment of funds has raised new concerns about the EB-5 program, which is facing reauthorization by Congress. For example, the June policy manual “appears to allow” developers to invest redeployed funds in projects that don't get as much vetting as the original EB-5 project, according to Gary Friedland, a scholar-in-residence at New York University who has written about the program.

“The investors may unwittingly end up with their money being invested in a much riskier venture than they anticipated,” he said.

More than 4,400 petitions for EB-5 status were filed in the third quarter of fiscal year 2017, which ended in June, according to Invest In the USA, a trade association. The number of pending petitions was up 11% from the second quarter to over 24,600, the group said.

Greystone, a large real estate lending and advisory firm, got into the EB-5 business in 2015 to help developers obtain

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low-cost capital. The firm has raised \$25 million through the program for an apartment building under development on 126th Street in Manhattan and is raising \$57.5 million for a similar project in Astoria, Queens.



A rendering of Criterion's EB-5 visa project at 30-80 12th St., Astoria, N.Y. PHOTO: HAAK ARCHITECTS

Ms. Berman said the Greystone venture decided to invest the redeployment funds in bridge loans backed by “performing, stabilized property” because such investments are relatively low risk compared with new developments. The funds are also more liquid than they would be if they were reinvested in new construction, she said.

There is no job-creation requirement on the redeployed funds. But the necessary jobs have been created after the original EB-5 investments are made, Ms. Berman pointed out. “Each investor already has created at least those 10 jobs,” she said.

Ms. Berman says the fund targets a 4% return after fees. Redeployment is good for the U.S. economy because it is keeping the EB-5 money “in commerce for longer than initially anticipated.”

EB-5 currently is a front-burner issue in Congress because the most controversial part of the law is scheduled to be sunset on Dec. 8. Many members have called for an overhaul. A few want it to be eliminated.

Without a consensus, Congress has been approving short-term extensions when similar deadlines have been hit. But some say the stars might actually line up this time around for an overhaul that would include an increase in the amount of the minimum investment, more investor protections and changes designed to earmark more of the funds for disadvantaged and rural areas, according to industry officials.

“We think there is a realistic chance this time that something might actually get done,” Mr. Klasko said.